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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

KRISTIN K. MAYES, Chairman 2010 SEP -8 P 2: 46
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

In the matter of:

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an
Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an
Arizona limited liability company;

Respondents.

Docket No. S-20600A-08-0340

RESPONDENTS
MICHAEL J. SARGENT
AND PEGGY L. SARGENT'S

RESPONSE TO THE SECURITIES
DIVISION'S MOTION TO SET

Arizona Corporation Commission

DOCKETED

SEP 8 2010

DOCKETED BY

Respondents Michael J. Sargent ("Mr. Sargent") and Peggy L. Sargent (collectively, the "Sargents") respectfully respond in support of the Securities Division's ("Division") Motion to Set a separate hearing against Respondent Mark W. Bosworth, Lisa A. Bosworth, Mark Bosworth & Associates, LLC and 3 Gringos Mexican Investments, LLC (collectively, the "Bosworth Respondents"). The Division's Motion is well-founded, for both legal and practical reasons. Allowing this matter to go forward would result in a complex set of procedural problems that would unnecessarily complicate the current hearing against the Sargents.

The current hearing has been against the Sargents only. The Division reached a settlement agreement with the Bosworth Respondents before the current hearing began. Until the last day of hearing (so far), the Bosworth Respondents did not participate in the hearing, other than Mr. Bosworth testifying as a witness for the Division. And his testimony was quite remarkable.

1 Mr. Bosworth testified that he does not believe that he committed securities fraud, nor does he
2 believe that he offered or sold unregistered securities, despite his signature on a "Consent to Entry
3 of Order." Bosworth's denials were in direct violation of his agreement that he would "not contest
4 the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present
5 or future proceeding in which the Commission is a party." (Bosworth Consent ¶ 5). The Sargents
6 suspect that Bosworth's direct violation of his Consent had something to do with the Division's
7 withdrawal of the proposed Consent Order, although the Division does not say so in its motion to
8 set.

9 Nor was that the only remarkable aspect of Bosworth's testimony. To hear him tell it,
10 Bosworth had no idea what was happening in his businesses, and he had little day-to-day
11 involvement in running the business. To say the least, this is inconsistent with the testimony of the
12 other witnesses. He also testified that the Division agreed that the restitution required by the
13 proposed Consent Order would be dischargeable in bankruptcy. While the Division has not
14 disavowed, on the record, this testimony by Mr. Bosworth, the Sargents believe that it is highly
15 implausible that the Division in fact agreed to have the restitution be discharged in bankruptcy.

16 On cross-examination, Mr. Bosworth admitted that the Superior Court has entered two
17 judgments against him under A.R.S. § 33-420 (filing false or forged documents regarding real
18 property), and that one case involved a widow. He also admitted that the United States Trustee has
19 instituted fraudulent transfer proceedings against him in bankruptcy court, and that the Arizona
20 Department of Real Estate ("ADRE") has entered a consent order against him. Remarkably,
21 Bosworth testified that ADRE consent order happened only because the head of ADRE was his
22 political enemy. All of this renders Bosworth's testimony questionable at best, and demonstrates
23 that Bosworth likely violated his obligation under his Consent to "providing complete and accurate
24 testimony at any hearing in this matter" (Bosworth Consent ¶ 11).

25 Because it is clear that Bosworth breached his obligations under Paragraphs 5 and 11 of his
26 proposed Consent, his Consent cannot go forward. We see no prospect of the Commission
27 approving a settlement under these circumstances, even if the Division were willing to offer one.

1 Thus, it is clear that there must be a hearing against the Bosworth Respondents. But the
2 hearing against the Sargents is already far along, and the Bosworth Respondents were absent for
3 most of it. With a signed settlement agreement and proposed Consent Order in hand, the Bosworth
4 Respondents had no expectation that their interests would be impacted by the current hearing
5 against the Sargents. As shown by the pre-hearing discussions and the conduct of the hearing, no
6 party anticipated the Bosworth Respondents participating in the hearing, other than Mr. Bosworth's
7 participation as a witness.

8 In administrative proceedings, "[d]ue process requires prior notice of the charges so that the
9 accused has a meaningful opportunity for explanation and defense." *Comeau v. Ariz. St. Bd. Of*
10 *Dental Examiners*, 196 Ariz. 102, 108 ¶ 28, 993 P.2d 1066, 1072 (Ct. App. 1999)(citation and
11 quotation marks omitted). As the Commission has explained, "procedural due process requires that
12 a respondent be provided notice that is "reasonably calculated under all the circumstances to
13 apprise interested parties of the pendency of the action and afford them the opportunity to present
14 their objection" and an opportunity to be heard "at a meaningful time and in a meaningful
15 manner.""
16 *Qwest Corp. v. Cox Arizona Telecom, LLC*, Decision No. 70664 (Dec. 24, 2008) at 49
17 (quoting *Comeau*). Indeed, given Bosworth's judgments and the ADRE proceeding referred to
18 above, it is important that legal requirements are followed so that a Commission order against
19 Bosworth not be subject to attack on appeal.

20 Here, the Bosworth Respondents (and all other parties) did not expect that the Bosworth
21 Respondents' interests were at stake in the hearing against the Sargents; therefore, they did not
22 have notice "reasonably calculated" to apprise them that the hearing was against them, nor did they
23 have a "meaningful opportunity for explanation and defense." Accordingly, due process requires
24 that a separate hearing be conducted against the Bosworth Respondents.

25 In addition to these legal considerations, practical considerations also point to the need for a
26 separate hearing. The Bosworth Respondents were not present at the hearing against the Sargents
27 (other than the last day). They are not familiar with the record. Nor did they have an opportunity
to cross-examine witnesses. Witnesses would have to be recalled for that purpose. Moreover, the

1 Division's case-in-chief was directed against the Sargents; the Division has stated it would have to
2 call additional witnesses and present additional exhibits if the current hearing includes the
3 Bosworth Respondents. Further, Mr. Bosworth has indicated a desire to call numerous witnesses
4 and to present numerous exhibits, and he has subpoena applications pending. It seems likely that
5 numerous pre-trial issues would have to be resolved (such as discovery issues, and the number and
6 identity of witnesses and exhibits) before a hearing against the Bosworth Respondents can go
7 forward. It thus makes little sense to include the Bosworth Respondents in the current hearing
8 against the Sargents; the Division is nearly ready to rest its case against the Sargents, so this hearing
9 is well-advanced.

10 Moreover, as the Sargents have repeatedly noted, they have limited means to pay for a
11 defense, and cannot afford lengthy, protracted proceedings. It is likely that most of the Bosworth-
12 related evidence would have little or no relevance to the Sargents; there is no reason to force them
13 to participate in lengthy hearings against the Bosworth Respondents. Instead, separate hearings
14 against the Sargents, and against the Bosworth Respondents, are not only sensible at this point, they
15 are the only option.

16 In sum, Mr. Bosworth has committed multiple breaches of his Consent Agreement. His
17 settlement will not go forward, so there must be a hearing against him. The Bosworth Respondents
18 did not have notice that the Sargent hearings would be used against them, and all parties proceeded
19 on the assumption that the hearings were against the Sargents alone. Due process requires a new
20 hearing against the Bosworth Respondents. And attempting to engraft proceedings against the
21 Bosworth Respondents into the nearly-complete hearing against the Sargents is impractical.

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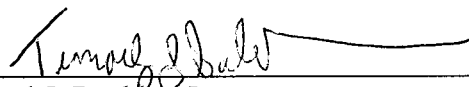
26 ...

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1 RESPECTFULLY SUBMITTED this 8th day of September, 2010.

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13 ORIGINAL and thirteen copies of the foregoing
14 filed this 8th day of September 2010 with:

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18 Copy of the foregoing hand-delivered
19 this 8th day of September, 2010 to:

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